IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1157 OF 2006

Vijay Baburao Shewale ...Petitioner
V/s.
The State of Maharashtra & Ors. ...Respondent

Mr.S.S. Kulkarni for the Petitioner.
Mr.Y.M. Nakhawa, APP for State-Respondent Nos.1 and 2.
Mr.V.P. Sawant i/b. M/s.ALMT Legal for Respondent No.3.

CORAM : V.M. KANADE, J.

DATED : AUGUST 14, 2007

P.C. :-

. Heard the learned Counsel for the petitioner and the learned Counsel for the Respondent.

2. Rule. Rule is made returnable forthwith by consent of parties. Respondent waives service.

3. The petitioner has filed a complaint under the provisions of the Child Marriage Restraint Act. Initially, process was issued by the Magistrate and the Police Inspector of Vishrantwadi Police Station was directed to make an inquiry and submit a report under the provisions of Section 202 of Cr.P.C. Thereafter, the police submitted a report dated 25th May, 2002 and

the learned Magistrate felt that the police had not conducted the inquiry properly and therefore, the said police was again directed to hold further inquiry into the case.

4. The respondent challenged the said order by filing a revision application in the Sessions Court. The Fourth Additional Sessions Court by its order dated 6th March, 2006 was pleased to allow the revision application and both the orders passed by the Magistrate were set aside. Being aggrieved by the aforesaid order, the petitioner has preferred this petition under Article 227 of the Constitution of India.

5. The learned Counsel for the petitioner submitted that the Sessions Court had clearly committed an error of law which is apparent on the face of record. He submitted that by virtue of provisions of Section 10 of the Child Marriage Restraint Act, the Magistrate was competent to issue directions under Section 202 of Cr.P.C. He invited my attention to Section 202 of Cr.P.C. and pointed out that under the said provision,

the Magistrate was competent to direct the police to hold inquiry and submit a report to the Magistrate. He submitted that the orders were passed by the Magistrate under Section 202 of the Cr.P.C. and the police had no other option but to investigate and submit a report to the Magistrate and unlike under Section 156(3) of Cr.P.C, the police were not competent to lodge complaint on behalf of the complainant. He submitted that that being the position, the Sessions Court clearly erred in setting aside the order passed by the Magistrate.

6. It is not possible to accept the said submission made by the learned Counsel for the petitioner. Section 10 of the Child Marriage Restraint Act specifically lays down that Magistrate taking congnisance of the complaint filed under the said Act, either has to hold an inquiry himself as required under Section 202 of the Cr.P.C. or direct its subordinate to hold the inquiry. Section 10 of the said Act reads as under :-

> "**10. Preliminary inquiries into offences.**- Any court, on receipt of a complaint of an offence of which it is authorised to take cognizance,

> shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) either itself make an inquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry."

7. In my view, the language of the said provision is very clear and unambiguous and it reflects the intention of the legislature in safeguarding interest of a child who is involved in the Child Marriage Restraint Act and in order to protect such persons, the legislature thought it fit to impose a condition on the Magistrate to hold the inquiry himself or to depute its subordinate for the purpose of holding such an inquiry. That being the legal position, the Sessions Court was justified in setting aside earlier two orders passed by the Magistrate viz. Order dated 29th April, 2002 and order dated 4th June,2005.

8. Needless to state that it is always open for the petitioner-complainant to approach the Magistrate asking him either to hold the inquiry himself or direct the subordinate to hold the inquiry as contemplated under Section 10 of the said Act. The Apex Court in the case

of **Muzaffar Ali Saudi and others, Appellant v. State of A.P. and others, Respondents, reported in AIR 2005 SC 1393** also has interpreted the provisions of Section 10 of the said Act and has observed that inquiry was to be conducted by the Magistrate. There is no merit in the submission made by the learned Counsel for the petitioner.

9. Writ Petition, is accordingly, dismissed. Rule is discharged.

10. Liberty is, however, granted to the petitioner to approach the Magistrate seeking appropriate orders under Section 10 of the Child Marriage Restraint Act.

. Writ Petition is disposed of.

(V.M. KANADE, J.)